

This letter discusses the applicability of local taxes to sales of motor fuel. See 86 Ill. Adm. Code 270.115. (This is a GIL).

July 5, 2001

Dear Xxxxx:

This letter is in response to your letter dated May 15, 2001. The nature of your letter and the information you have provided require that we respond with a General Information Letter, which is designed to provide general information, is not a statement of Department policy and is not binding on the Department. See 2 Ill. Adm. Code 1200.120 subsections (b) and (c), which can be found at <http://www.revenue.state.il.us/legalinformation/regs/part1200>.

In your letter, you have stated and made inquiry as follows:

Public Act 91-8051, HB3478 Enrolled (see attached) allows for 'the dispensing or delivery of flammable or combustible motor vehicle fuels directly into the fuel tanks of vehicles from tank trucks, tank wagons or other portable tanks'. In the industry, this practice is commonly referred to as direct fueling, wet hosing or spot fueling. The Act went into effect on June 22, 2000.

AAA is asking the Illinois Department of Revenue for a General Letter Ruling with regards to the tax rates imposed by the State on the product sold to a customer in the fueling process known as wet hosing. Are these considered retail transactions to be taxed at the rates prevailing at the delivery location (including Home Rule taxes) or are they considered wholesale transaction to be taxed at the rates of the location where the order is accepted?

If there are any questions, please contact me.

You have not provided us enough information to make any determinations regarding taxation of the sales you make. Therefore, what follows is a general discussion of taxes as they might be applied to sales of motor fuel.

Under the Motor Fuel Tax Law, 35 ILCS 505/1 et seq., a motor fuel tax is imposed on the privilege of operating motor vehicles upon the public highways, including toll roads, and recreational-type watercraft upon the waters of this State. A motor fuel use tax is imposed upon the use of motor fuel upon highways (including toll ways of this State) by commercial motor vehicles.

Sales of motor fuel are also subject to the Retailers' Occupation Tax. 35 ILCS 120/1 et seq. Persons purchasing motor fuel for their own use or consumption incur a Use Tax liability on such fuel.

See 35 ILCS 105/1 et seq. The Use Tax must be paid to suppliers at the time of purchase or self-assessed and remitted to the Department, if the suppliers are not registered to collect and remit tax to the Department.

In addition to the above mentioned State taxes, sales of motor fuel may also be subject to locally imposed taxes such as the County Motor Fuel Tax or home rule sales taxes.

The County Motor Fuel Tax Law, 55 ILCS 5/5-1035.1, provides that the county board of the counties of DuPage, Kane and McHenry may impose a tax upon all persons engaged in the county in the business of selling motor fuel at retail for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways.

This tax is imposed, as far as is practicable, in the same manner as the Retailers' Occupation Tax. As a result, the regulations applicable to the Retailers' Occupation Tax, as far as practicable, apply to this tax. Regulations for the County Motor Fuel Tax are found at 86 Ill. Adm. Code Part 695. The regulations governing the Retailers' Occupation Tax are found at 86 Ill. Adm. Code Part 130.

The Retailers' Occupation Tax Act defines "sale at retail" as "any transfer of the ownership of or title to tangible personal property to a purchaser, for the purpose of use or consumption, and not for the purpose of resale in any form as tangible personal property...." See the enclosed copy of 86 Ill. Adm. Code 130.201. The County Motor Fuel Tax further limits this definition to retail sales of motor fuel for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways. If a retail sale of motor fuel is not for the operation of motor vehicles upon public highways or for the operation of recreational watercraft upon waterways, then the sale is not subject to County Motor Fuel Tax.

Please find enclosed a copy of 86 Ill. Adm. Code 270.115, which explains how to determine the applicability of a Home Rule Municipal Retailers' Occupation Tax. These principles apply to other types of local taxes as well. As you can see, the tax is incurred when sellers engage in the business of selling in a jurisdiction imposing the tax. It is the Department's position that the most important element in selling is the acceptance of the purchase order. Consequently, the location at which the purchase order is accepted determines the proper tax rate. Absent clear proof to the contrary, the Department will assume that retailers have accepted the purchase order at the place of business at which the retailers received the purchase order. In the absence of acceptance of a purchase order in Illinois, the location of the sale is considered to be where the inventory from which the order is filled is maintained in the State.

Please note that subsection 270.115(f) provides that in regard to sales from vehicles carrying uncommitted stock of goods, "[t]he seller's place of engaging in business when making sales and deliveries (not just deliveries pursuant to previously accepted orders, but actual sales and deliveries) from a vehicle in which a stock of goods is being carried for sale is the place at which such sales and deliveries happen to be made – the vehicle carrying such stock of goods for sale being regarded as a portable place of business." 86 Ill. Adm. Code 270.115(f).

I hope this information is helpful. The Department of Revenue maintains a Web site, which can be accessed at [www.revenue.state.il.us](http://www.revenue.state.il.us). If you have further questions related to the Illinois sales tax laws, please contact the Department's Taxpayer Information Division at (217) 782-3336.

If you are not under audit and you wish to obtain a binding Private Letter Ruling regarding your factual situation, please submit all of the information set out in items 1 through 8 of the enclosed copy of Section 1200.110(b).

Very truly yours,

Martha P. Mote  
Associate Counsel

MPM:msk  
Enc.